



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: DDD Company
File: B-228850
Date: November 23, 1987

DIGEST

1. Protest that offeror was improperly excluded from the competitive range is denied where record shows that agency reasonably determined that proposal contained major technical weaknesses, correction of which would require complete revision of proposal.
2. General Accounting Office will not consider the merits of an untimely basis of protest that allegedly relates to, but is distinct from, another timely basis of protest, as each basis of protest must independently satisfy the timeliness requirements set forth in our Bid Protest Regulations.

DECISION

DDD Company protests the exclusion of its proposal from the competitive range under request for proposals (RFP) No. EMW-87-R-2568, issued by the Federal Emergency Management Agency (FEMA) for the storage and mail distribution of maps and other related materials for the National Flood Insurance Program. DDD contends that its proposal clearly established its abilities to meet FEMA's technical requirements and, to the extent its initial proposal may have been found deficient, it should have been afforded the opportunity to revise this proposal. DDD also alleges that FEMA's refusal to extend the closing date for receipt of proposals precluded the submission of fully responsive offers.

We deny the protest in part and dismiss it in part.

The RFP set forth the following three major evaluation criteria and their respective weights: Understanding and Technical Approach (35 points) (included 4 subcriteria); Qualifications of the Offeror (40 points) (included 8 subcriteria); and Staffing (25 points) (included 3 subcriteria). Cost was stated to be less important than technical capability, and award was to be made to the

offeror deemed most advantageous to the government, technical merit, cost, and other factors considered.

FEMA received four proposals in response to the solicitation. Two of the offerors were found technically acceptable and were asked to submit best and final offers. FEMA determined that DDD's proposal was outside the competitive range on the ground that major weaknesses in its proposal were not correctable without complete revision. On all three technical evaluation criteria, DDD was rated significantly lower than the two offerors included in the competitive range. DDD protests this evaluation.

The evaluation of technical proposals and the resulting determination as to whether an offeror is in the competitive range is a matter within the discretion of the contracting agency, since that agency is responsible for defining its needs and the best method of accommodating them. Generally, offers that are technically unacceptable as submitted and would require major revisions to become acceptable are not required to be included in the competitive range. Rice Services, B-218001.2, Apr. 8, 1985, 85-1 CPD ¶ 400. In a technical evaluation, we will not reevaluate the proposal, but instead will examine the evaluation to ensure that it was not arbitrary or in violation of procurement laws and regulations. W&J Construction Corp., B-224990, Jan. 6, 1987, 87-1 CPD ¶ 13. We find that FEMA's technical evaluation of DDD's proposal and exclusion of the firm from the competitive range were reasonable.

Under the first evaluation criterion, Understanding and Technical Approach, the RFP specified that proposals would be evaluated in four areas, each relating to separate tasks outlined in the statement of work. Although FEMA found that DDD demonstrated a general understanding of the work required (particularly, the process of handling inventory (maps) from receipt through distribution), it also found that the firm's approach to performing several tasks was deficient and required complete revision. Specifically, FEMA determined that DDD's plan to effectuate a transfer of operational responsibilities from the incumbent distribution contractor to itself did not conform to certain requirements of the RFP; DDD's proposal to split the inventory between two facilities was inefficient and was not in compliance with stated requirements; the firm's proposed utilization of only two electronic pick machines to perform all warehouse functions was based on erroneous assumptions regarding the practical workloads of individual employees and, thus, was not sufficient to ensure satisfactory performance; and its intended use of only 10 ADP terminals (the incumbent was using almost twice as many) would not be sufficient to allow

the staff to monitor and maintain the entire distribution system properly.

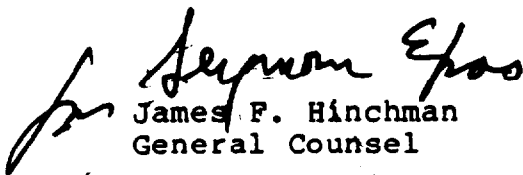
The second evaluation criterion, Qualifications of the Offeror, required the offeror's to demonstrate their capabilities to perform the required work as evidenced by experience in eight separate areas. FEMA found that while DDD had experience in smaller but similar contracts and proposed an outstanding subcontractor to run the required ADP system, DDD had not established its ability to fulfill order and market requirements and did not address certain quality control concerns. The third criterion, staffing, specified that offerors would be evaluated with respect to three categories of personnel: project manager, key personnel, and other staff. FEMA found that the staff actually proposed by DDD was of a high quality, but that the number was insufficient to perform all required functions, particularly with respect to ADP support, and the material distribution system (only 2 employees proposed to do the work of 16).

We have reviewed the record and find that FEMA's evaluation appears to be consistent with the RFP requirements and the evaluation criteria. DDD, besides offering several conclusionary statements regarding its understanding of the requirement, its past experience in performing contracts of a similar size and scope for other agencies, and the superior qualifications of its proposed workforce, does not specifically address or refute any of the concerns raised by FEMA in its report. Indeed, DDD indicates that it had suspected that its warehouse arrangement and order fulfillment approaches would not be acceptable. DDD believes it should have been afforded an opportunity to discuss and correct these and other deficiencies, but FEMA determined that since these were major defects that would necessitate a total reformulation of DDD's proposal, discussions would serve no purpose and were not required. We agree, and find FEMA acted reasonably in excluding DDD from the competitive range. See Pharmaceutical Systems, Inc., B-221847, May, 19, 1986 (agencies are not required to conduct discussions with firms properly excluded from the competitive range).

Notwithstanding any deficiencies found in its proposal, DDD maintains it should have been afforded special consideration given its status as a small business concern. Since the RFP was not set aside for small businesses, however, there was no legal basis for FEMA to give special consideration to this status. See ICSD Corp., B-222478, July 7, 1986, 86-2 CPD ¶ 37.

Finally, DDD maintains that FEMA's decision not to extend the closing date for receipt of proposals following the issuance of an allegedly material amendment prevented offerors from submitting fully responsive proposals, and violated full and open competition requirements. DDD acknowledges that this basis of protest is untimely under our Bid Protest Regulations, as it was not raised until after the closing date for receipt of initial proposals, 4 C.F.R. § 21.2(a)(1) (1987) (protests based upon alleged solicitation improprieties apparent prior to the closing date for receipt of initial proposals, must be filed not later than that date), but argues that we nevertheless should consider this contention as it is relevant to, albeit distinct from, its other contention. We point out, however, that each basis of protest must independently satisfy the timeliness requirements set forth in our Regulations. See Chesapeake and Potomac Telephone Co., B-224228 et al., Feb. 5, 1987, 87-1 CPD ¶ 120. Thus, this contention regarding the closing date for receipt of proposals is clearly untimely, and will not be considered.

The protest is denied in part and dismissed in part.


James F. Hinchman
General Counsel